

REMARKS

The Office Action mailed March 22, 2005 has been received and reviewed. Claims 1-15, 21-33, 39, and 40 are in the case. Claims 1, 24, 30, and 31 stand rejected under 35 U.S.C. §102(b). Claims 2-15, 21-23, 25-28, 32, 33, 39, and 40 stand rejected under 35 U.S.C. §103(a).

By this amendment, claims 1-4, 8, 11, 21, 26, 32, and 40 have been amended and claims 7, 10, 25, and 28 have been cancelled to avoid repetition of claim limitations. For the reasons set forth below, claims 1-6, 8, 9, 11-15, 21-24, 26, 27, 29-33, 39, and 40 are believed to be in condition for immediate allowance. Favorable reconsideration of the application in view of the following remarks, is therefore respectfully requested.

If the examiner finds generic claim 1 allowable, Applicant requests consideration of claims 16-20 and 34-38, which are currently withdrawn, but are included within the scope of generic claim 1.

Rejection of Claims 1, 24, 30, and 31 Under 35 U.S.C. §102(b)

Claims 1, 24, 30, and 31 stand rejected under 35 U.S.C. §102(b) as being anticipated by Chandler.

For a prior art reference to anticipate, every element of the claimed invention must be identically disclosed in a single prior art reference. Moreover, those elements must be arranged or connected together in a single reference in the same way as specified in the patent claim.

In view of this rule, the rejection of anticipation by Chandler should be withdrawn because Chandler does not disclose every element of newly amended claims 1, 24, 30, and 31. For example, claims 1, 24, 30, and 31 now require at least one fracture region providing controlled fracture, in response to bending stress, to adjust the length of the spacer. As has been

recognized by the examiner, Chandler provides no such disclosure. Reconsideration is respectfully requested.

Rejection of Claims 2, 3, 21, 25-28, 32, 33, 39, and 40 Under 35 U.S.C. §103(a)

Claims 2, 3, 21, 25-28, 32, 33, 39, and 40 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Chandler in view of Nattel. By this amendment, claims 25 and 28 have been cancelled to avoid repetition of claim limitations.

To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (*See* MPEP 2143.) With respect to claims 2, 3, 21, 27, 32, 33, 39, and 40, a rejection of obviousness is improper because the combination of Chandler and Nattel does not teach or suggest all the claim limitations. Specifically, neither Chandler nor Nattel teach a spacer having a fracture region providing control fracture in response to bending.

As acknowledged by the examiner, Chandler provides no length adjust. Accordingly, the examiner relies on Nattel. However, Nattel teaches length adjustment by bending, not by fracture as required by Applicant's newly amended claims. Moreover, Nattel teaches a bracket of sheet metal, a material that easily supports bending, but is not susceptible to fracture. One may note that the bracket of Nattel may be bent to a ninety degree angel without fracture. (*See* Nattel Figure 3.) Accordingly, one could not fracture the bracket of Nattel by bending even if he or she wanted to do so. Reconsideration of claims 2, 3, 21, 27, 32, 33, 39, and 40 is respectfully requested.

Rejection of Claims 4-15, 22 Under 35 U.S.C. §103(a)

Claims 4-15, 22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Chandler in view of Nattel and Doherty. By this amendment, claims 7 and 10 have been cancelled to avoid repetition of claim limitations.

As stated hereinabove, to establish a prima facie case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (See MPEP 2143.) With respect to claims 4-6, 8, 9, 11-15, and 22, a rejection of obviousness is improper because the combination of Chandler, Nattel, and Doherty does not teach or suggest all the claim limitations. Specifically, neither Chandler, Nattel, nor Doherty teaches a spacer having a fracture region providing control fracture in response to bending.

As discussed hereinabove, the combination of Chandler and Nattel does not teach length adjustment by fracture. Because Doherty provides no teaching of length adjustment, it cannot remedy this deficiency of Chandler and Nattel. Reconsideration of claims 4-6, 8, 9, 11-15, and 22 is respectfully requested.

Rejection of Claim 23 Under 35 U.S.C. §103(a)

Claim 23 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Chandler in view of Doherty.

As stated hereinabove, to establish a prima facie case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (See MPEP 2143.) With respect to claim 23, the combination of Chandler and Doherty does not teach or suggestion every claim limitation. Specifically, neither Chandler nor Doherty teaches a spacer having a fracture region providing control fracture in response to bending. Reconsideration is respectfully requested.

In the event that the examiner finds any remaining impediment to the prompt allowance of any of these claims, which could be clarified in a telephone conference, the examiner is respectfully urged to initiate the same with the undersigned.

DATED this 10th day of May, 2005.

Respectfully submitted,



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